OMB WATCH

**Testimony of J. Robert Shull,**
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**before the**
**Subcommittee on Regulatory Affairs**
**of the House Committee on Government Reform**
**on**
**"The Paperwork Reduction Act at 25:**
**Opportunities to Strengthen**
**and Improve the Law"**

**March 8, 2006**

Thank you, Madame Chairwoman and members of the Subcommittee on Regulatory Affairs, for this opportunity to testify today about reauthorizing the Paperwork Reduction Act. My name is Robert Shull, and I am the Director of Regulatory Policy for OMB Watch, a nonprofit, nonpartisan research and advocacy center that for over 20 years has promoted an open, accountable government responsive to the public's needs.[1] I also coordinate Citizens for Sensible Safeguards, a coalition of labor, environmental, consumer, and other public interest groups with millions of members nationwide, which formed in the 1990s to stop the anti-regulatory components of the Contract With America and has remained active ever since to address policies that affect the government's ability to protect the public.

OMB Watch's particular interests in federal capacity to protect the public through regulatory policy, free access to government information, and the public's right to know about the risks to which it is exposed have led us repeatedly to the Paperwork Reduction Act, the OMB Office of Information and Regulatory Affairs created by that act, and OIRA's implementation of paperwork and regulatory review powers. Accordingly, OMB Watch has followed issues related to the PRA and OIRA for more than twenty years. In that time, we have repeatedly documented an OIRA that has wielded great power in impenetrable secrecy, as the federal government equivalent of a star chamber. A single office, operated by a relative handful of people, exerted inordinate power to control government operations by shaping the outcome of regulations and the collection and dissemination of information, in a style of operations proudly proclaimed in the news as "Leave no fingerprints."[2]

OIRA has taken important steps over the last ten years to increase the transparency of its operations, although it has not stepped down its assumption of power over government policy. In fact, the office has arrogated even more power in recent years, as it has cited the PRA and other tenuous statutory authorities to exert control over yet more areas of policy making such as risk assessment, guidance documents, and agency science. The office created to manage information resources has instead been obsessed with substantive policy in ways that Congress never intended.

We have paid such close attention to the PRA and OIRA's activities because the public has so much at stake in the nexus of information and substantive policy. OMB Watch approaches these issues from a few simple premises:

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[1] OMB Watch, incorporated as Focus Project, Inc., does not take federal grants or contracts. In response to the subcommittee's request, I certify that OMB Watch has not accepted any federal grants or contracts in the current fiscal year or the previous two fiscal years.

[2] *See* Gary D. Bass, Testimony before the Senate Gov'tal Affs. Comm., May 19, 1994, *available on Westlaw at* 1994 WL 233378 (F.D.C.H.).

(1) Government in America serves the public. We use government institutions to pool our collective resources into institutions strong enough to act against the larger forces that isolated individuals cannot surmount. FDR explained it best in a July 1933 fireside chat: "It goes back to the basic idea of society and of the nation itself that people acting in a group can accomplish things which no individual acting alone could even hope to bring about."[3] The federal government is a powerful way for the public to "act[] in a group" on a national basis to meet national needs.

(2) The unparalleled aggregation of resources that we have in our federal government entails a responsibility to use those resources to identify the public's unmet needs for public health, safety, environmental, consumer, and other protections, as well as to ensure that long-addressed needs do not reemerge as new problems.

(3) Information is critical to the fulfillment of that responsibility. Effective use of government resources is dependent on information about the needs of the citizenry and the consequences of government decisions. Without the proper information, we cannot make informed decisions on how best to serve the vast and complex web of public needs. Information is necessary in order to know how well existing government programs are functioning as well as what work is left to be done.

(4) Information is also valuable for government accountability. Armed with information, the public can better identify needs for government action and hold its elected representatives to address those needs. Sophisticated accountability systems, such as performance management tools, can only work with rich information about real world conditions revealing the effectiveness (or lack thereof) of government programs.

(5) Sound information resource management must coordinate and manage the vast universe of information activities performed by federal agencies without limiting the flow of critical information to the agencies and to the public. It should limit "burden" by making use of new technologies to simplify and streamline the collection and dissemination of information, not by leaving policymakers and the public in the dark.

With these principles in mind, I would like to address three major points:

1. Reauthorization should refocus OIRA priorities on information resources management. Although the GAO has testified recently about burden hour increases over time, the truth is that the data on burden hours are meaningless and ignore too much about the value of information. Instead of focusing on burden reduction, Congress should refocus the PRA on the neglected but critically important issues of information resources management.

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[3] FDR, Fireside Chat, July 24, 1933.

2. Reauthorization is an important opportunity to take the PRA into the information age. The very name—the *Paperwork* Reduction Act—signifies the law's origins in the pre-Internet era. Now is a perfect opportunity to promote the use of information technology to improve transparency in OMB and to reduce reporting burden without reducing information the public needs.

3. Reauthorization should not, however, be used as an opportunity to distort regulatory policy or otherwise promote non-germane proposals. In order to preserve the historically bipartisan support for the law, reauthorization should be clean of such extraneous riders.

## I. REAUTHORIZATION SHOULD REFOCUS OIRA PRIORITIES ON INFORMATION RESOURCE MANAGEMENT.

This subcommittee could best serve the public in the PRA reauthorization by refocusing OIRA resources beyond paperwork reduction alone and back on the larger universe of information resource management activities. In particular, OIRA should be focused on identifying government-wide methods to streamline and automate information collection without sacrificing quality and timeliness of information. The 1995 PRA attempted to address some of these issues:

- Several of the 1995 reauthorization provisions focus on effective use of resources to accomplish agency missions and improve agency performance. The Director of OMB was instructed to develop and use common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability. Congress added the responsibility for development and utilization of standards in recognition of the critical need for some commonality in interfaces, transparency of search mechanisms, and standardized formats for sharing and storing electronic information.

- Agency responsibilities for IRM also expanded. The head of each agency became responsible for "carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness." Agencies were directed to develop and maintain an ongoing process to ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions and, in consultation with the OMB Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management of about information resources management.

These goals are actually more meaningful for the public than burden hour reductions, in large part because "burden hour" quantifications are fatally flawed, and because these goals have taken on new relevance since 9/11. Instead of an overly simplified and crude percentage reduction in paperwork, Congress should make effective and efficient management of information the goal of a reauthorized PRA.

### A. There is no need to make burden reduction the primary focus of PRA reauthorization.

I urge this subcommittee not to take recent reports of increases in paperwork burden hours as the basis for discussion of PRA reauthorization. I am, of course, aware that the Government Accountability Office recently testified that the 1995 PRA reauthorization's burden reduction goals would have resulted in approximately three billion fewer burden hours at the end of September 2001 than were actually imposed. Three billion: it is a striking observation, but it does not begin to tell us anything meaningful about government collection of information, much less paperwork "burden."

#### *1. Reports of burden hour increases alone fail to reveal a problem.*

The observed increase in estimated burden hours does not necessarily mean that there has been an increase in *unnecessary* burden. As OIRA itself has observed, burden hour increases can reflect changing priorities, such as the post-9/11 imperative to improve national security in such key areas as the security of the food supply. Any burden increase resulting from efforts to address the new post-9/11 reality certainly is not a problem that demands more burden reduction initiatives.

The post-9/11 context is not the only limitation that precludes any meaningful inferences from observations of burden hour increases:

- A significant factor for burden hour increases may be factors completely beyond all government control. The burden hour is a function of not just the time spent complying with an information collection but also the number of people participating in it. In the aftermath of Hurricane Katrina, for example, larger than normal numbers of people will complete applications for the National Flood Insurance Program and public assistance programs. The result will be an observed increase in burden hours, *even if the forms themselves are unchanged.*

- Another significant factor is beyond agency control: new statutes passed by Congress, requiring new or revised information collections that result in burden hour increases. As GAO observed, agency burden reduction initiatives decreased burden by 96.84 million burden hours from 2003 to 2004, but that burden *reduction* was offset by a burden *increase* resulting of 119 million burden hours because of new statutory mandates.[4]

In the former case, burden hour increases do not result from increases in paperwork burden but, rather, from the burden of circumstances beyond anyone's control. In the latter case, there is an increase in the number of information collections but not an increase in *unnecessary* burden, because the public itself, acting through its elected representatives, declared the need for the information. OIRA helpfully distinguishes the first of these in its annual reports as "adjustment" increases, but the second kind is routinely noted but not carefully measured as distinct from other government-directed "program changes" in burden hours.

[4] Linda D. Koontz, GAO, *Paperwork Reduction Act: Burden Reduction May Require a New Approach* (GAO-05-778T), Testimony before the Subcomm. on Reg. Affs., House Cmte. on Gov. Reform, June 14, 2005, at 8.

*2. The "burden hour" figure is a case of garbage in, garbage out.*

Another reason not to draw too many conclusions from estimates of increased burden hours is that the numbers themselves—the "burden hour"—are meaningless. There is no science or real-world experience applied to the quantification of a burden hour; accordingly, the burden hour figure does not reliably measure anything:

> [B]urden hour estimates are not a simple matter. . . . [I]t is challenging to estimate the amount of time it will take for a respondent to collect and provide the information or how many individuals an information collection will affect. Therefore, the degree to which agency burden-hour estimates reflect real burden is unclear. . . .[5]

Burden hour estimates are, incidentally, *estimates*. Any empirical studies or surveys to measure the time burden of an information collection would themselves be subject to the PRA and burden hour estimation.

For the benefit of the subcommittee, we are submitting with this testimony a detailed discussion of the deficiencies of quantifying burden hours. In short, the methodologies for quantifying burden hours differ not just from agency to agency but also within agencies. The only noteworthy consistencies are the flaws in burden hour quantification methodologies: among them, the failure to acknowledge that any new information collection, even a time-saving computerized process replacing an old paper form, will take a certain amount of time the first time it is used and then will require much less time to complete as users become familiar with the process. The estimates have historically been increased or decreased for no apparent reason at all.[6] In all probability these burden hours are skewed too high.

*3. Burden numbers tell only half the story.*

Even if reports of burden hour increases actually told us something meaningful, they still cannot be the basis of an informed discussion of reauthorization because they exclude too much about the value of the information at stake. The PRA mandates disclosure of only the estimated burden hour and is agnostic about both the benefits derived from the information and the democratic values that inhere in information collections mandated by law. As a result, when PRA debates are based on the burden hour estimate, the debates inevitably are one-sided. Those who supply information subject to the PRA can readily engage in debate against perceived weaknesses of the law, because all that is disclosed about information collection activity is the estimated *burden*. Congress seldom hears from those who benefit from the collection of the information, mostly because they know little about the PRA.

The observation of burden hour increases may tell us something about the amount of information flowing into government, but it tells us nothing about the enormous benefits the public gains from that information. It cannot tell us, for instance, how information impacts important policy decisions or how information is used to keep us safe. Inspecting a nuclear plant for vulnerabilities or meat products for signs of mad cow disease involve collecting information. Government decisions to remove arsenic from drinking water or lead from gasoline rely on information about the levels of existing pollutants and their impacts on the population. Car safety features such as air bags and seat belts require extensive trials

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[5] *Id.* at 9-10.

[6] For example, in May 1989, OIRA decided to raise an IRS burden estimate—and then upped its own re-estimate. By the time OIRA finally decided to reject the information collection altogether, the burden estimate had grown nearly 2,000 percent, from 2.5 million burden hours to 39 million burden hours, with no accounting for the dramatically revised estimate. *See* OMB Watch, *Monthly Review*, June 30, 1989, at 3.

before going to market and then further information collections to gauge their impact. Collecting flood insurance benefits or deciding when and where to build a levee depends on information collections, as does forestalling against a natural disaster, disease epidemic, or terrorist attack. All of these require the collection of massive amounts of information, ranging from the preparedness of state and local governments to assessments of various risks. On this point, OMB Watch can actually agree with OMB, which routinely spends several pages in its annual Information Collection Budget report outlining the enormous benefits this information can provide.[7]

### B. Information resource management is too important to neglect.

Instead of burden hour estimates, I recommend this subcommittee focus on a different number: $60 billion. That's the amount the federal government spends annually on information technology—and it is an amount which OIRA cannot, according to the GAO, determine is being spent effectively.

The number is critically important, not least because it is a significant amount of taxpayer dollars, but also because it underscores the value of information resources management. From the beginning, the Paperwork Reduction Act concerned much more than paperwork, despite the name of the law. The PRA charges OIRA and federal agencies to collaborate on a wide range of activities beyond the reduction of information collection burden:

- Developing information resources management policies
- Promoting public access to information
- Coordinating statistical policies and systems
- Implementing records management activities
- Overseeing information privacy and security policies
- Overseeing the development of major information technology systems

OIRA has not, however, paid sufficient attention to these information resource management responsibilities. In 1982 and 1983—the very beginning of the PRA—the GAO reported that a significant portion of OIRA's resources had been devoted to non-PRA regulatory reviews, to the detriment of the Act's information resources management requirements. For example, of the 13 tasks to be completed by April 1, 1983, OIRA had completed only four. GAO concluded that OIRA was basically ignoring its responsibilities for information policy, statistics, and the management of information resources.[8] OIRA has not broken with that early trend: as recently as 2002, GAO was again reporting an OIRA failure to take seriously its wider responsibilities under the PRA, in this case a failure to develop and maintain a government-wide strategic plan for information resource management.[9]

Two information resource management issues of vital importance in a post-9/11 world dramatize the critical need for refocusing OIRA beyond paperwork: information security, and information technology.

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[7] *See, e.g.*, OFFICE OF INFO. & REG. AFFS., OMB, 2002 MANAGING INFORMATION COLLECTION AND DISSEMINATION 5-10, *available at* <http://www.whitehouse.gov/omb/inforeg/paperwork_policy_report_ final.pdf>.

[8] *See* Gary D. Bass, Testimony before the Legisl. & Nat'l Sec. Subcomm. of House Gov't Operations Comm., July 25, 1989, at 6.

[9] *See generally* GAO, "Information Resources Management: Comprehensive Strategic Plan Needed to Address Mounting Challenges," Rep. No. GAO-02-292 (Feb. 2002).

*Information Security*

The PRA requires OMB, in conjunction with the agencies to develop and implement information security policies, including identifying and affording "security protections commensurate with the risk and magnitude of the harm resulting from" a breach of information security."[10] GAO reports, however, have identified several information security issues that merit the attention of OMB.

For instance, in June 2005, GAO identified information security gaps at the Department of Homeland Security. According to the report, "DHS has not fully implemented a comprehensive, departmentwide information security program to protect the information and information systems that support its operations and assets."[11] GAO found that DHS has not completed information system security plans or the risk assessments necessary "to determine what controls are necessary and what level of resources should be expended on them."[12]

According to GAO, weaknesses in information security systems are pervasive throughout the federal government, putting government information at serious risk. Agencies suffer from "pervasive weaknesses" in information security "because agencies have not yet fully implemented information security management programs. As a result, federal operations and assets are at increased risk of fraud, misuse and destruction."[13] These deficiencies are immediately relevant, because OMB is given the responsibility under the PRA for developing and overseeing policies and guidelines on information security, privacy, and disclosure.[14]

OMB has frequently left the agencies in the dark on how to handle information security issues. For instance, a GAO report found major security flaws in agencies' implementation of wireless technology. Federal agencies have not secured many of the risks associated with wireless networks. "For example, nine federal agencies reportedly have not issued policies on wireless networks. In addition, 13 agencies reported not having established requirements for configuring or setting up wireless networks in a secure manner."[15] GAO recommended that OMB "instruct agencies to ensure that wireless network security is addressed in their agencywide information security programs."[16]

*Information Technology*

The PRA also instructs OIRA to develop and institute cross-agency information technology initiatives and to ensure agencies integrate information technology into their information resources management plans. Agencies are also required to account for their information technology expenditures to OMB. Each year, agencies submit to OMB exhibit 300—a Capital Asset Plan and Business Case—which provides justification, including analysis and documentation, to support investment decisions.

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[10] 44 U.S.C. § 3504(g).

[11] GAO, "Information Security: Department of Homeland Security Needs to Fully Implement Its Security Programs," Rep. No. GAO-05-700 (June 2005), at 2.

[12] *Id.*

[13] GAO, "Information Security: Weaknesses Persist at Federal Agencies Despite Progress Made Implementing Related Statutory Requirements," Rep. No. GAO-05-552 (July 2005), at 2.

[14] *See* 44 U.S.C. § 3504(g).

[15] GAO, "Information Security: Federal Agencies Need to Improve Controls over Wireless Networks," Rep. No. GAO-05-383 (May 2005), at 2.

[16] *Id.*

According to GAO, however, agencies have not adequately justified their information technology expenditures. Exhibit 300s often did not include the proper analysis of costs and projected benefits of the investments, as required by OMB. "Agency officials attributed the shortcomings in support to lack of understanding of a requirement or how to respond to it."[17]

While OMB spends ample time assessing costs and benefits for regulatory proposals not governed by the PRA, it has failed to provide the same exacting scrutiny to the $60 billion spent annually on information technology. Not only did GAO find that agency justification for information technology investments were inadequate, GAO also found that OMB was not effectively using its management reviews to make cross-agency assessments of information technology strengths and weaknesses. Despite developing a Management Watch List to track IT investments, OMB "did not develop a structured, consistent process for deciding how to follow up on these actions," according to GAO.[18] "Because it did not consistently monitor the follow-up performed, OMB could not tell us which of the 621 projects identified on the fiscal year 2005 list received follow-up attention, and it did not know whether the specific project risks that it identified through its Management Watch List were being managed effectively. This approach could leave resources at risk of being committed to poorly planned and managed projects."[19]

GAO has also identified a number of specific information technology failures, some of which also pose security risks. For instance, GAO found last year that no federal agencies, with the exception of the Department of Defense, had begun to plan for the transition to Internet Protocol version 6. According to GAO, "[t]ransitioning to IPv6 is a pervasive and significant crosscutting challenge for federal agencies that could result in significant benefits to agency services. But such benefits may not be realized if action is not taken to ensure that agencies are addressing key planning consideration and security issues."[20] Under the PRA, OMB is charged with initiating cross-agency information technology initiatives;[21] accordingly, GAO recommended that OMB "instruct agencies to begin addressing key planning considerations for IPv6 transition."[22]

Poor information resources management planning also impacts specific government initiatives that rely on information to function properly. GAO identified weakness in the application of information technology in specific agencies and programs, including in many information programs necessary to protect our public health. GAO found that the CDC's public health surveillance tool, Biosense, which gathers data in order to detect early signs of disease outbreaks, was underutilized by state and local governments "primarily because of limitations in the data it currently collects."[23] GAO identified several challenges to improving public health infrastructure, most dealing with the implementation of information

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[17] GAO, "Information Technology: Agencies Need to Improve Accuracy and Reliability of Investment Information," Rep. No. GAO-05-250 (Jan. 2006), at 3.

[18] GAO, "Information Technology: OMB Can More Effectively Use Its Management Reviews," No. GAO-05-571T (April 21, 2005), at 2.

[19] *Id.*

[20] GAO, "Information Protocol Version 6: Federal Agencies Need to Plan for Transition and Manage Security Risks," No. GAO-05-845T (June 29, 2005), at 3.

[21] *See* 44 U.S.C. § 3504(h).

[22] GAO, "Information Protocol Version 6," *supra*, at 3.

[23] GAO, "Information Technology: Federal Agencies Face Challenges in Implementing Initiatives to Improve Public Health Infrastructure," Rep. No. GAO-05-308, at 3.

technology, including weaknesses in "IT planning and management" at CDC and DHS, and poor coordination among various federal, state, and local public health agencies.[24]

As that last example makes clear, information resources management is not an issue of concern reserved for Washington policy wonks: the public has an acute interest. The apparent failure to move Hurricane Katrina-related crisis information effectively through federal, state, and local government information channels is a vivid case in point of the high stakes in information management. The contrast between the existence of a hotline for business leaders to stay in touch with government in times of crisis[25] and the ongoing failure to create first-responder communication systems in the years since 9/11 is another. Now more than ever, the public needs effective management of information resources for its safety, health, and security. It is long past time for OIRA to devote its resources to these critical needs.

### C. Reauthorization is an opportunity to reestablish the right focus.

Reauthorization is a prime opportunity to focus OIRA on the information resources management issues that are so critical for the public but receive too little attention and coordination. The following are suggestions for amendments that would help the current law better serve the public's needs.

#### *1. Signal the importance of information resource management in the name of the reauthorization bill.*

One simple, costless, uncontroversial, but powerful step that Congress could take to refocus OIRA's importance on the importance of information resource management would be to use a different name for the bill to reauthorize OIRA's role: instead of Paperwork Reduction Act, a name that draws attention to one limited subset of OIRA's responsibilities, use a name that refers to the entire universe of information management responsibility, such as the Information Resources Management Act. With no radical change in any legal authority, Congress could nonetheless powerfully signal its intention to focus OIRA's attention on the larger task at hand.

#### *2. Reduce unnecessary reviews of information collections.*

The PRA requires agencies and OIRA to undertake an elaborate review process for all information collections that pose the same questions to ten or more people—in other words, almost every information collection that the federal government ever decides to undertake. Congress could free up OIRA's time to concentrate on information resources management by focusing this review responsibility in more strategic ways:

- *Distinguishing Unnecessary from Necessary "Burden":* No one is asking for the federal government to demand information without a need for it. That being said, some information collections *must* impose a "burden" to ensure that the proper health and safety precautions are

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[24] *Id.*

[25] The hotline is called CEO COMLINK, touted as being able to "within five minutes link every one of the Business Roundtable's 150 CEOs with the federal government to coordinate disaster responses involving their industries." Nat'l Conf. of States on Bldg. Codes & Stands., *Homeland Security Summit Summary: Not If, But When, Where, How! Are We Prepared?*, *available at* < http://www.ncsbcs.org/newsite/Association %20 services/committee%20items/Article_Homeland_Security.htm>.

taken, that recipients receive due payments from government entities, that government programs are effective, or that government services are not being stolen by ineligible people. Congress could clarify that the law is not meant to mandate elimination of information that the public needs by making either of two simple fixes: (1) dropping section 3505(a), which crudely mandates percentage reductions in burden hour without regard for the value of information; or (2) simply changing all mentions of "burden" to "*unnecessary* burden."

- *Fixing the Problem of Low Thresholds:* Agencies are required to go through the same level of scrutiny whether their information collection will require 10 respondents or 10 million respondents. In fact, a substantial fraction of the information collection reviews completed by OIRA last month covered collections from very small numbers of respondents:

    - 11.49% collected information from fewer than 25 respondents;
    - 16.17% collected information from fewer than 50 respondents;
    - 23.83% collected information from fewer than 100 respondents; and
    - fully 41.70% collected information from fewer than 1,000 respondents.[26]

  Although one possibility for focusing the information collection review process could import the "economically significant" category from Executive Order 12,866, an easier fix—one less likely to require significant new additions to the law, and less likely to trigger the suspicions of the public interest community—would be simply to raise the threshold in section 3502(3)(A)(i) from ten to some more reasonable number, such as one thousand or even just one hundred.

- *Eliminating Coverage of Voluntary Information Collections:* The PRA also requires the same time-intensive (and, incidentally, *paper*-intensive) information collection review process even when information is being collected on an entirely *voluntary* basis. When agencies want to get voluntary feedback from recipients of government services, for instance, their proposed information collection receives the same level of scrutiny as if they were collecting data on chemical emissions or automobile accidents. If an agency is not mandating responses from individuals, the collected information is hardly a burden. Viewing it as such is akin to viewing a Gallup poll or customer satisfaction survey as a burden on respondents. An easy fix would be to amend 44 U.S.C. § 3502(3)(A) to strike the words "obtaining, causing to be obtained, soliciting, or " (thus leaving only the word *requiring*).

- *Eliminating Coverage of Information Needed to Measure Program Performance:* sections 115 and 116 of the Government Performance and Results Act require agencies to provide quantifiable indicators and measures in assessing agency performance. To properly implement GPRA, agencies inevitably must collect new information. Yet the mandated annual reductions in information collections under the PRA put a damper on the collection of this needed information. As a result, GPRA's objective of having publicly trusted performance indicators may be seriously falling short. Likewise, agencies may be suffering unnecessarily under the White House's Program Assessment Rating Tool, a duplicative performance appraisal mandate imposed by the executive branch (sometimes in conflict with GPRA), because the PRA imposes significant burdens on their ability to collect information demonstrating their results. Congress can reconcile this conflict—and, simultaneously, free up more of OIRA's time to devote to information resources management—by amending 44

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[26] Data taken from OIRA's website, "Reviews Completed in Last 30 Days" with rundate of March 2, 2006, available on the Internet at <http://www.whitehouse.gov/omb/library/OMBPPWKC.html>.

U.S.C. § 3518(c)(1) to add an exemption for information collected during the conduct of establishing the effectiveness of a program or measuring program outcomes in order to carry out the activities described in 31 U.S.C. § 1115, prepare program performance reports required in 31 U.S.C. § 1116, or participate in any performance assessment process.

*4. Order staffing allocations that reflect information resource needs.*

If Congress decides to maintain the law's longstanding interest in information collection reviews, it can better focus OIRA's implementation of that responsibility by correcting the office's staff allocations. OIRA has historically focused greater oversight and review on the paperwork of agencies such as the Environmental Protection Agency, the Department of Housing and Urban Development and the Occupational Safety and Health Administration than it did on the paperwork of others (such as the IRS). Agencies such as EPA, USDA, DOL, HHS, DOT, and Dept. of Education have a disproportionate number of OIRA desk officers overseeing their work compared to the amount of paperwork they actually produce.

For instance, the USDA's 1999 paperwork burdens accounted for 0.9 percent of the total burden imposed by government paperwork, yet six of 34 desk officers at OIRA (18 percent) were assigned to the agency in 2001. Similarly, EPA's paperwork burden consisted of 1.7 of the total government paperwork, yet it also has six desk officers overseeing its work. In contrast, the Treasury Department, which constituted over 82 percent of government paperwork burden, only had one assigned desk officer. (Data based on GAO FY 1999 estimates and the list of OIRA desk officers' assignments as of October 15, 2001.)

OMB Watch recommends Congress eliminate this imbalance of attention by mandating in any PRA reauthorization that OIRA must assign desk officers in proportion to the amount of paperwork burden associated with each agency.

## II. REAUTHORIZATION SHOULD TAKE FEDERAL INFORMATION RESOURCE MANAGEMENT INTO THE INFORMATION AGE.

The PRA was a pre-Internet law. Even its name—the *Paperwork* Reduction Act—signifies its interest in paper forms, a vehicle for collecting information that is decreasing in importance as the Internet and new technologies, such as the fabled "smart dust" of nanotechnology, make supplying information easier than ever. Even in 1995, the last reauthorization, we had barely begun to exploit the opportunities of the Internet. Since then we have seen an explosion of applications, and the amount of computing capacity available to individuals and business has grown exponentially. Each year we produce, distribute, and save more information than the year before, and we actively search for yet more information that will enable us to set and manage priorities. Chief Information Officers have become a standard position in many corporations, which are increasingly savvy to the integration of information and management. The government is not apart from these trends. Taking into consideration the tremendous growth our society has experienced in the creation of information, the government's fairly stable to low growth in paperwork burden is actually quite surprising.

The PRA has yet to catch up with the new environment. As discussed above, the information resource management activities that correspond most closely with advances in information technology are

precisely the activities that OIRA has least addressed. Congress can and should use reauthorization as an opportunity to update the PRA.

### A. Congress should update the burden reduction section to accommodate the possibilities of information technology.

We continue to develop better and more effective tools for gathering, delivering, organizing and analyzing information. The U.S. government is only beginning to explore these options. In 2003, Congress passed the first E-Government Act, which agencies only now are beginning to implement. The question for reauthorization should not be how the government can reduce the amount of information it collects but, rather, how it can harness information technology to make it easier than ever to collect the information we need to protect the public.

The TRI-ME software developed by EPA to streamline TRI reporting provides us with a good example of the kind of advance that reauthorization can promote. The electronic reporting software has reduced the reporting burden for submitters by hundreds of thousands of hours without reducing the quantity or quality of information at all. The Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory Program, written by Cody Rice in EPA's Office of Environmental Information in 2002, estimated an even higher level of burden reduction than reported in EPA's 2003 ICRs. A sample of facilities testing TRI-ME estimated a 25 percent reduction in calculations, form completion, and recordkeeping/mailing activities. The report projected 283,000 hours of reduced burden with just 60 percent of facilities using the program.

The burden reduction imperative in section 3505(a) is an example of the pre-Information Age approach. It should be supplanted with a new mandate for the Information Age: as a requirement for OIRA to work with agencies on identifying ways to use information technology to reduce the burden of information collection without reducing the quantity, quality, or frequency of information for the public.

### B. Reauthorization should expand government obligations to disseminate information.

Unlike information collection and burden reduction, the issues of dissemination and public access have received too little attention in the PRA. Prior to the 1995 reauthorization, the PRA did not contain a definition of public information, nor was dissemination included in the purpose of the law. The 1995 reauthorization changed all that and included a new purpose: to "provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology." This theme is indicative of a significant change in thinking about the purposes and uses of government information.

The last PRA reauthorization also included a definition for public information, which covered "any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public." The most important aspect of the 1995 definition language was the phrase "regardless of form or format." In this phrase, the Act laid down as a fundamental principle that it does not matter whether "public information" is print, electronic or otherwise (e.g., microfiche); the requirements for dissemination and public access will be the same. As the government began conducting more of its business electronically, Congress recognized the importance of maintaining a level of access to new formats for information. This language (echoed in the responsibilities of the Director of OMB) ensures not only current access but also—as it is reinforced in agency records management responsibilities for

archiving information maintained in electronic format—ongoing access to historically (and otherwise) valuable data and information.

The last reauthorization also gave the Director of OMB the added responsibility to provide direction and oversee "agency dissemination of and public access to information." Agency responsibilities also expanded for information dissemination and provision of public access. Under the earlier versions of the PRA, agencies had no direct responsibilities—and hence no mandate and no incentive—for information dissemination. Provisions under section 3506 not only require each agency to "ensure that the public has timely and equitable access to the agency's public information" but also lay out some critically important principles. Unfortunately, this section only addresses what agencies *should* do as they disseminate public information. It does not mandate public access to government information.

As Congress goes forward with reauthorization, the issue of public access must be taken up anew and established more firmly as a national priority. The Freedom of Information Act, a powerful safety net in requiring disclosure of government records, should become a vehicle of last resort in the Internet age we live in. Congress should modify the PRA to include a new and innovative provision that creates an affirmative responsibility for agencies to publicly disseminate, in a timely manner, any and all information collected by government agencies except for information that is exempt from disclosure under FOIA.

In the 1995 reauthorization Congress mandated the creation of the Government Information Locator Service (GILS) to assist agencies and the public in locating information and promoting information sharing and equitable access by the public. However, the legislation only required a GILS to "identify the major information systems, holdings, and dissemination products of each agency" and failed to require the program to provide access to the information. Moreover, GILS has been by-passed by the ubiquity of the Internet and the growth of information on agency web sites. Congress should revise the GILS program, building on the E-Government Act, and mandate creation on a public access system that allows the public to integrate information and databases from multiple programs and agencies.

It is time for the United States to have a law that requires public access to government information—and the PRA is the best vehicle to make that happen.

### C. Congress should improve transparency of information collection reviews.

Another concern about the PRA has been its susceptibility for manipulation by administrations as a backdoor for achieving politically motivated goals with regards to the regulatory process. With oversight authority residing at OMB, which is a political office of the White House, concerns have been raised that PRA can be too easily used as a tool for political abuse. Given the amount of time and resources OIRA devotes to little else beyond paperwork reduction goals and a form-by-form review process, these concerns are well founded.

Many believe that OIRA has used its paperwork authority, in combination with regulatory review powers granted by executive order, to interfere with substantive agency decision-making about policies and programs. Jim Tozzi, who worked as a Deputy Director at OIRA during the 1980s, acknowledged this to the *Washington Post*: "I have to plead guilty to that. The paperwork is a way in, you know?" We urge Congress to discourage this misuse of the PRA by requiring OIRA to publicly explain and justify any information collection requests it alters, declines or delays. These explanations should be published in the *Federal Register* as well as compiled and reported annually to Congress.

Additionally, Congress should empower the public to know more about OMB's actual implementation of the PRA, to make sure that OMB is not using the information clearance process as "a way in" to distorting regulatory priorities. OMB is required by law to maintain a docket room for information clearance decisions and related records, which it does do. That docket is only available, however, in OMB's offices here in Washington, D.C. OMB's PRA decisions have enormous consequences for the entire nation, not just the people of Washington, D.C., so people outside of Washington should be given access to those records. We are not calling for anything innovative or even difficult to do; right now, most federal agencies, in compliance with the E-Government Act, maintain Internet-accessible versions of their rulemaking dockets, and people all over the world can download documents from those dockets and hold the agencies accountable. OMB should do the same. We also recommend that OMB link the online disclosure of its rulemaking activity with that of the PRA activities since many of the actions are related.

## III. REAUTHORIZATION SHOULD NOT UNDERMINE PUBLIC PROTECTIONS.

Given the importance of information resources management, it is critically important that reauthorization stay focused on that subject. Above all, we need Congress to take this opportunity to ensure that the public receives the information it needs, without creating any new threats to the quantity, quality, or frequency of that information. Moreover, in order to preserve the historically bipartisan character of support for the PRA, this opportunity for improving the government's management of information resources should not be endangered by non-germane riders that could distort science or weaken public protections.

### A. EPA burden reduction initiatives are the wrong model for other government programs.

Although GAO has testified that EPA's burden reduction initiatives may be a model for the rest of the government, it is important to stress that there is more to the story beyond "burden hours." EPA has made a substantial effort to reduce information collection burden, expending considerable resources in the process. Yet the result of EPA's efforts has been a reduction not simply in burden but in important information about toxics that is necessary to keep communities safe and informed.

Most notably, EPA recently proposed reducing the accuracy of reporting under the Toxic Release Inventory, letting companies produce ten times the pollution before requiring them to report the details of the release. Furthermore, EPA announced its intention to switch to biennial reporting, significantly reducing the level of accountability the program provides over facilities and making it impossible for communities to get timely information on toxic releases and trends.

Each of these burden reduction proposals would accomplish its goal by sacrificing either the quantity or quality of information collected. Burden reduction by any means necessary—reducing burden by reducing the amount and accuracy of the information reported—is inappropriate.

This is not to say that there aren't legitimate actions that could be taken to help reduce reporter burden while maintaining benefit to the public. However, EPA is not considering these types of options, such as strengthening use of electronic reporting. Such an option would seem most reasonable given the importance of the TRI program and the demonstrable progress it has spurred. In a period when the government is continually advancing use of the Internet through e-government and e-rulemaking policies, this option seems like an obvious choice to explore. In fact, EPA's TRI-ME reporting software, though

still a relatively new effort, has already proven successful at reducing burden without eliminating any collection of information.

Nonetheless, EPA has yet to establish key identifiers to allow industry to submit certain types of information such as name and address only once. Creation of key identifiers not only would significantly reduce reporting burden, but it would also enhance utility of the information collected since the public and government could begin linking disparate data sets based on these common identifiers. The PRA should be breaking ground in these types of constructive efforts to better manage government information collections.

If the necessity and significance of this information was at all in question, one has only to look at the huge reductions in toxic emissions that have results from the public's access to this information. Since facilities began reporting in 1988, there has been a nearly 60 percent reduction in total releases of the 299 core chemicals that the program began tracking. Simply making this information available has fueled a significant drop in the toxic chemicals in our environment. As new chemicals have been added to the TRI program, we have also seen those releases drop. EPA reported this year that since the TRI list was expanded to 589 chemicals in 1998, there has been a 42 percent reduction in total releases. TRI has become EPA's premier database of environmental information demonstrating the power of information to promote change and improvements.

Because of the risks posed by the TRI burden reduction proposal, we urge Congress not to promote the EPA "model" during PRA reauthorization.

### B. Reauthorization must not distort regulatory policy with amendments that are extraneous to information resource management.

We urge Congress to refrain from attaching to any PRA authorization non-germane provisions. Often, an important and broad government-wide bill, such as a PRA reauthorization, can attract numerous amendments and riders that deal with unrelated, or even vaguely related, issues. A few scattered mentions in the press indicate interest in some circles in using PRA reauthorization as a vehicle for often-proposed, often-rejected ideas. Congress should not cave in to any such pressure.

For example, there has been great attention given to the Data Quality Act that was passed as an appropriations rider in 2001. We have created a website providing updates on implementation of the law at http://www.ombwatch.org/article/articleview/2668/. In monitoring the law, we have been surprised to see the expansionist approach OMB has taken to interpreting a rider than was never debated in Congress. Without doubt this rider has become a highly controversial law. One issue that has emerged from industry is whether data challenges filed under the law are judicially reviewable. Judicial reviewability of the DQA would cripple government agencies from meeting their obligation to serve the public's needs, especially since industry groups often use the DQA not just to correct technical errors but, further, to demand substantive changes in the informational basis for a policy. We strongly urge Congress not to add any provisions that make DQA challenges reviewable in a court of law.

Additionally, we know that industry groups such as the U.S. Chamber of Commerce have been working in coalitions led by lobbying firm Valis Associates. The corporate lobbying coalition has been working in backdoor meetings with the White House to plot ways to use PRA reauthorization as a vehicle to promote ideas that would benefit corporate special interests at the expense of the public interest. Among these ideas:

- "open peer review," or creating an end-run around the balance requirements of the Federal Advisory Committee Act by throwing peer review open to the Internet, and allowing the legions of industry-funded scientists to overwhelm scientific assessment of policy issues;

- enshrining in law the executive order in which the White House arrogates to itself the power to interfere in agency regulations—a power that has been used in recent years to water down standards for protecting the public health against the runoff from large scale farming operations, order analytical requirements that devalue the lives of seniors, weaken a rule to protect drivers and vehicle occupants by alerting them to dangerously underinflated tires, and more; and

- adding "sunsets" or mandatory expiration dates for regulations, even proven protections such as the ban on lead in gasoline.

These proposals would threaten existing protections and gut the government's capacity to develop new protections to meet the public's needs. Any such non-germane proposals would only muddy the discussion of information resources management and would threaten the bipartisan support that the PRA has traditionally engendered. They must be excluded from reauthorization.

I thank you for this opportunity to testify, and I look forward to addressing your questions.